

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Derrick Schaeffer,)	
)	
Plaintiff,)	No. 19-cv-7711
)	
-vs-)	Judge Robert M. Dow Jr.
)	
City of Chicago, et al.)	Magistrate Judge Jeffrey T. Gilbert
)	
Defendants.)	

DEFENDANTS' JOINT MOTION FOR PROTECTIVE ORDER

Defendant City of Chicago (“Defendant City”), by and through its attorney, Celia Meza, Acting Corporation Counsel for the City of Chicago, and Defendants Mario Perez (“Perez”), James Brandon (“Brandon”), Jocelyn Gregoire (“Gregoire”), and James Kinsey (“Kinsey”), (collectively “Defendants”) by and through one of their attorneys, Evan K. Scott, Assistant Corporation Counsel, for their Joint Motion for Protective Order, state as follows:

BACKGROUND

This matter involves certain alleged civil rights violations during a series of events related to Derrick Schaeffer’s arrest and detention by the Chicago Police Department on February 1, 2017. *See generally* ECF. No. 1. Since the matter’s inception, a significant amount of discovery has proceeded, both in the form of depositions as well as document production. To date three depositions have been completed, including Plaintiff’s and two of the four named Defendants. Plaintiff did not explicitly request or state that any of those depositions be video recorded.

On December 4, 2020, Plaintiff’s counsel’s office emailed “Plaintiff’s Notice of Depositions.” *See attached* Notice, *attached as* “**Exhibit A.**” In relevant part it reads “Notice is hereby given that plaintiff will commence depositions, to be recorded by audiovisual means using

Zoom and by stenographic means” See Exhibit A. On December 18, 2020, Plaintiff’s counsel completed the deposition of Defendant Brandon and had commenced the deposition of Defendant Kinsey when counsel for Kinsey noticed that the Zoom proceedings were being video recorded through the application. Defense counsel then confirmed with Plaintiff’s counsel that the current Zoom deposition of Defendant Kinsey, as well as the prior Zoom depositions of Defendants Perez and Brandon, had been recorded via Zoom.

Plaintiff’s counsel contended, as he contends now, that his Notice of Depositions was sufficient to put Defendants on notice that the depositions would be video recorded via Zoom. Defendants disagree. First, the notice is vague as to whether the video recording would be certified. Second, Plaintiff’s counsel did not state on the record that the proceedings were being video recorded, even though he clarified on the record that the proceedings were being transcribed via court reporter. Even if he did, Plaintiff may not bypass rules that exist to preserve the integrity of the discovery process.

ARGUMENT

Defendants ask this Court to enter a protective order preventing Plaintiff from video recording the upcoming depositions unless the depositions are video recorded by a certified videographer and the recording is fixed on the deponent during the entirety of the deposition. These protocols are necessary to preserve the integrity of the deposition and the privacy of the attendees.

The Court has broad authority to manage the discovery process under Federal Rule of Civil Procedure 26, and Rule 26(c) expressly allows the Court to enter orders to manage discovery to avoid undue burden and expenses. In addition, Rule 30(b)(4) authorizes the Court to order a deposition by remote means, and Rule 30(d)(3)(B) allows the Court to limit the scope and manner

of the deposition.

The process for certifying depositions is delineated in the Federal Rules of Civil Procedure. *See* Fed.R.Civ.P. 28, 30. “These procedures are designed to ensure that a neutral individual administers the oath and that the deposition is an accurate reflection of the witness’s testimony.” *Alcorn v. City of Chicago, et al.*, Case No. 17CV5859, Docket # 269, attached hereto as Exhibit B, at 3. “It removes doubt as to whether a recording or transcript has been tampered with or edited by either party.” *Id.* “The process also maintains the integrity of the deposition, which can involve managing changes to the transcript, custody of the deposition materials, and appearances on video.” *Id.*

Plaintiff seeks to bypass the process outlined in the Federal Rules of Civil Procedure which exist to ensure the integrity of the deposition. Plaintiff seeks to obtain a certified transcript of the recording but an uncertified video recording of the deposition. As the Court noted in *Alcorn*, such a proposal is untenable. To start, “[t]here would be no certification that the Zoom video recording accurately captures the testimony of the deponent.” *Id.* Moreover, “[n]othing in Rule 30 allows a party to engage in a secondary recording or transcription of a deposition, and treat that recording as the equivalent of a certified deposition.” *Id.* at 4. The Court noted that Plaintiff’s proposal, taken to its logical conclusion, could lead to a situation in which each party records a deposition using their personal iPhone and then claims that their recording is the equivalent of the court reporter’s certified transcript. *Id.* Plaintiff’s proposal would render Rule 30’s officer and certification requirements meaningless. *Id.* Thus, “[i]f the video recording is to become an official version of a deposition that can be used as evidence, the procedures of Rule 30 must be followed and a certified video recording must be obtained.” *Id.* at 7. Simply put, these procedures are designed to ensure that a neutral individual administers the oath and that the deposition is an

accurate reflection of the witness's testimony.

WHEREFORE, for the reasons stated above, the Defendants JOINTLY and respectfully request an Order preventing Plaintiff from video recording the upcoming depositions unless the depositions are video recorded by a certified videographer and the recording is fixed on the deponent during the entirety of the deposition.

Date: December 30, 2020

Respectfully Submitted,
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